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EXAMINER

NASSER, ROBERT L

ART UNIT

PAPER NUMBER

3735

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DELIVERY MODE

08/25/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Applicant's arguments filed 7/25/2008 have been fully considered but they are not persuasive.

Applicant has noted that Yanagidaira is in no way related to analyzing brain waves. The examiner does not understand this comment. Yanagidaira receives brain waves, filters the signals and identifies the frequency of the brain waves. By definition, this is the analysis of brain waves.

Applicant has stated that the examiner has asserted that the amplifier and light signal producing system 200 of Yanagidaira are comparable to the receiver receiving and amplifying the signals. The examiner has suggested no such thing. The examiner has proposed modifying Yanagidaira by replacing the wired connection with a wireless connection. In order to have a wireless connection there must be a transmitter at the headband and a receiver at the processor. Hence, the receiver is the receiver of the combination and the amplifier 24.

Applicant argues at length why the light producing system 200 or the amplifier 24 are not receivers. Again, the examiner never suggested they were.

Applicant has further stated that the references provide no motivation to add a receiver. The examiner notes that wireless connection are well known in the medical arts, as exemplified by DeVito, and that under the explicit reasoning of the KSR decision, it would either be a simple substitution or obvious to try a wireless connection. Alternatively, the use of wireless connections reduces the number of wires, avoiding entangling the patient.

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Applicant has further asserted that none of the art has a sound generator that converts the frequency band signal into sound. The examiner again does not understand. Yasushi filters the brain waves and identifies the alpha or other desired band. The amplitude of the band is then converted to a sound which varies with the amplitude of the band. Hence, the frequency band signal is applied to the sound generator which provides an output based on the signal. This clearly meets the claim language.

Applicant has further asserted that there is no motivation to add a sound generator to Yanagidaira, as there is no teaching that a sound generator would have a relaxing effect on the patient. The examiner disagrees. Yasushi shows a device that is for the exact same purpose as Yanagidaira, to invoke the desired brain wave frequency. Yasushi teaches that such a sound generator allows the user to know the levels of alpha waves and how they are produce (see column 10, lines 10-14). This alone is proper motivation. Additionally, under the reasoning of KSR, it would have been both obvious to try and a matter of simple substitution.

Applicant has reiterated that Lee does not provide a selectively adjustable filter so that Lee cannot convert the frequency band signal to an audible output, as it converts the entire band. The examiner again notes that this point is irrelevant. The Federal Circuit has quite clearly established that a reference is good for all it teaches. There is no requirement that a reference teach all of the claim features in order to be useable in a combination. Lee, as previously notes, is a tertiary teaching. The first two reference teach a system that has all of the claim features, except for the audio output,

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with Itil specifically teaching the selectively adjustable circuit. Lee teaches that an audible output is a advantageous output because it provides more immediate and easier to understand feedback. There is nothing in the Patent Laws requiring Lee to show the other claim features to be useable. Indeed, such reasoning would prevent any obviousness combination from being made. It is the examiner's position that this is clear motivation to make the modification.

Applicant has further asserted that the sound producing system of Lee would have to be significantly modified to be incorporated into the combination. The examiner notes that the Federal Circuit has established that the references need not be bodily combined. Rather, the combination suggests the desirability of the combination. It is well within the realm of routine experimentation for one skilled in the art to determine how to provide an audible output in response to the signals of the combination. The fact that the references do not teach how to restructure the system is not relevant to prosecution.

As such, the rejections stand.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT L. NASSER whose telephone number is (571)272-4731. The examiner can normally be reached on m-f 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Robert L. Nasser Jr/
Primary Examiner
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RLN
August 22, 2008